

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
First-Class Package Service
First-Class Package Service Contract 36

Docket No. MC2014-32

Competitive Product Prices
First-Class Package Service Contract 1 (MC2014-32)
Negotiated Service Agreement

Docket No. CP2014-57

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
FIRST-CLASS PACKAGE SERVICE CONTRACT 36
TO THE COMPETITIVE PRODUCT LIST

(July 15, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2116.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request filed pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add First-Class Package Service Contract 36 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. In addition, the Postal Service filed a redacted (public) copy of Contract 36. The Postal Service also filed under seal an unredacted, non-public copy of Contract 36, along with required financial workpapers.

¹ PRC Order No. 2116, Notice and Order Concerning the Addition of First-Class Package Service Contract 36 to the Competitive Product List, July 8, 2014.

² Request of the United States Postal Service to Add First-Class Package Service Contract 36 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 3, 2014 (Request).

According to the Postal Service, First-Class Package Service Contract 36 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying Contract 36 are supported by Governors’ Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification provides support for adding First-Class Package Service Contract 36 to the competitive product list. Request at 2.

Contract 36 is the successor to First-Class Package Service Contract 1, which was the subject of Docket Nos. MC2012-11 and CP2012-19.⁴ Contract 1 was scheduled to expire on July 9, 2014. In response to a Postal Service Motion, the Commission authorized Contract 1 to continue through, and expire on, August 8, 2014, or upon Commission approval of Contract 36, whichever occurs first.⁵

The effective date of Contract 36 is one business day following the day on which the Commission issues all necessary regulatory approval. *Id.*, Attachment B at 2. Contract 36 is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification. *Id.*

COMMENTS

The Public Representative has reviewed Contract 36, the Statement of Supporting Justification, and the financial workpapers filed under seal that accompany the Postal Service’s Request.⁶ Based upon that review, the Public Representative concludes that First-Class Package Service Contract 36 should be categorized as a

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, May 22, 2011 (Governors’ Decision No. 11-6), filed in Request, Attachment A.

⁴ *Id.* at 1; see also Request of the United States Postal Service to Add First-Class Package Service Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data, Docket Nos. MC2012-111/CP2012-19, April 17, 2012 (Contract 1 Request).

⁵ See Motion of the United States Postal Service for Temporary Relief, Docket Nos. MC2012-11/CP2012-19, July 2, 2014; see also Order Granting Motion for Temporary Relief, Order No. 2112, Docket No. CP2012-19, July 3, 2014.

⁶ In reviewing Contract 36, the Public Representative notes that in Article I: Terms, Paragraphs C., D., E., and F., internal references should be updated and revised to reflect changes in Contract 36, which differs from other First-Class Package Service contracts.

competitive product. However, Contract 36 is misclassified as a First-Class Package Service contract. Instead, Contract 36 should be added to the competitive product list as a Priority Mail & First-Class Package Service contract. With this classification change, the Postal Service should also update and revise the financial workpapers to show whether or not Contract 36, as a Priority Mail & First-Class Package Service contract, will generate sufficient revenues to cover costs in accordance with 39 U.S.C. § 3633(a).

Product List Assignment. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable for purposes of categorizing Contract 36 as competitive. For the reasons stated below, however, the Public Representative concludes that Contract 36 should be added to the competitive product list as a Priority Mail & First-Class Package Service contract.

Contract 36, as the successor to Contract 1, offers a return service for First-Class Package Service packages. However, Contract 36 differs from Contract 1 in an important respect. Contract 1 applies to returns of First-Class Package Service packages weighing less than 1 pound.⁷ By contrast, there is no similar restriction on weight in Contract 36. Request, Attachment B at 1. As a result, returns under First-

⁷ Contract 1 Request, Attachment B at 1. Similarly, in the only other First-Class Package Service contract offering return service, prices are “based on a statistical review of Customer’s less than one (1) pound in-bound (returns) package volume” Request of the United States Postal Service to Add First-Class Package Service Contract 35 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data, Docket Nos. MC2014-14/CP2014-23, December 27, 2013, Attachment B at 1.

Class Package Service Contract 36 can be expected to include packages from other competitive products, such as Priority Mail, weighing in excess of 1 pound.

Given the significance of this change, the Postal Service provides no explanation as to why it considers Contract 36 to be a successor to Contract 1.⁸ Nor does the Postal Service explain why it has changed the classification of the First-Class Package Service contract to include packages from other competitive products weighing more than 1 pound.

Because Contract 36 permits returns that exceed the 1 pound maximum weight applicable to returns in all previous First-Class Package Service contracts, the Public Representative recommends that Contract 36 be classified as a Priority Mail & First-Class Package Service contract.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

Although Contract 36 is applicable to returns weighing more than 1 pound, the financial workpapers do not estimate an average weight per piece for such returns. Nor does the Postal Service separately estimate unit costs for such returns. Rather, the financial workpapers estimate Mail Processing and Carrier Collection and Delivery unit costs for Contract 36 using the average unit costs for the First-Class Package Service product. With respect to Transportation and Vehicle Service Drivers, the Postal Service estimates such unit costs for Contract 36 by assuming all returns are First-Class Package Service returns that weigh more than the product average, instead of

⁸ By comparison to Contract 1, the Public Representative determined that significant changes had been made in Contract 36, the "successor" contract to Contract 1, including elimination of the 1 pound weight limit and changes in the pricing formula. In this regard, Contract 1 served an analogous role to Contract 36, much like a "baseline" agreement to subsequent agreements in certain competitive international products, such as the Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. To the extent the Postal Service identifies certain contracts as "successors" in future proceedings concerning domestic negotiated service agreements, the Commission may wish to require that the Postal Service describe all differences in the successor contract compared to the earlier contract, as is required in competitive international products consisting of multiple agreements.

separately estimating Transportation and Vehicle Service Driver unit costs for the returns weighing more than 1 pound. As a result, the financial workpapers appear to understate the costs for Contract 36.

For these reasons, the Public Representative is unable to determine whether or not Contract 36 will generate sufficient revenues to cover costs in accordance with 39 U.S.C. § 3633(a). The Public Representative therefore recommends that the Postal Service update and revise the financial workpapers for Contract 36 using separately estimate costs for package returns weighing more than 1 pound to permit the determination required by 39 U.S.C. § 3633(a). The Public Representative notes, however, that Chairman's Information Request No. 1, filed under seal on July 10, 2014, may provide sufficient information to make such a determination.⁹

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁹ Chairman's Information Request No. 1 and Notice of Filing Under Seal, July 10, 2014.